Frank J. Foronjy & Sons Electric Corp. *and* Local 25, International Brotherhood of Electrical Workers, AFL–CIO. Case 29–CA–15234

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

Upon a charge filed by the Union on October 1, 1990, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 27, 1991, against Frank J. Foronjy & Sons Electric Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file a timely answer.

On May 20, 1991, the General Counsel filed a Motion for Summary Judgment. On May 23, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On June 10, 1991, the Respondent filed an affidavit in opposition to the Motion for Summary Judgment and an untimely answer which includes affirmative defenses. On June 13, 1991, the Union filed an affidavit in support of the Motion for Summary Judgment. On July 12, 1991, the Union filed a reply to the Respondent's affidavit in opposition to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board.''

The answer to the complaint was initially due on March 13, 1991. The undisputed allegations in the Motion for Summary Judgment disclose that, 2 weeks after the Respondent's failure to meet this deadline, the General Counsel, by letter dated March 27, 1991, notified the Respondent that no answer had been received and that unless an answer was received by April 5, 1991, a Motion for Summary Judgment would be filed. By letter of April 4, 1991, the day before the answer was due, the Respondent wrote to the Region asking for an extension of 30 days. The Regional Director, by letter dated April 5, 1991, issued an order extending time to answer the complaint until May 6, 1991. The Respondent did not file an answer by May 6, 1991. The affidavit filed by the Respondent's current attorney states that he was retained to represent the Respondent in this matter on May 31, 1991, that ''[u]pon information and belief'' the Respondent's prior attorney failed to file an answer ''by the new due date of May 6, 1991, due to the failure of his law office to properly record the new date the answer was due in the office diary,'' that the Respondent's prior attorney had been involved in a state court trial for 7 weeks since March 18, 1991, and that the Respondent's prior attorney ''was informed of the new date while in trial in a telephone conversation with his office on a pay telephone.''

We find that the Respondent's explanation does not constitute good cause for its failure to file a timely answer.[1] Although it is incumbent upon the Respondent to provide the Board with the specific details concerning the alleged recording error,[2] the attorney whose ''law office'' allegedly failed to record properly the new due date has provided no information to us, and no reason has been given why he is unable to supply a statement on this matter. Further, even if we accept as true the assertions in the Respondent's affidavit concerning an error by the ''law office,'' it is undisputed that the Respondent's prior attorney was personally notified of the new due date. Indeed, May 6, 1991, was the due date that he had asked for in his April 4, 1991 request for an extension of time. In sum, the Respondent has not satisfactorily explained why its prior attorney was unable to file a timely answer by the due date that he had specifically requested and of which he had been personally notified. Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, with its principal office and place of business in Massapequa, New York, provides electrical contracting and related services. During the past year, the Respondent, in the course and conduct of its business, has performed services valued in excess of $50,000 for various enterprises located in the State of New York, each of which enterprises, in turn, is directly engaged in interstate commerce and meets a Board standard of jurisdiction, exclusive of indirect inflow or indirect outflow. We find that the Respondent is an employer engaged in com-

[1] See *U.S. Telefactors Corp.*, 293 NLRB 567 (1989) (the combination of a possible settlement, the illness of one of the respondent's attorneys, and the unusually heavy workload of the respondent's attorneys, does not constitute good cause for the failure to file a timely answer).

[2] *Father & Sons Lumber*, 297 NLRB 47 (1989).

merce within the meaning of Section 2(6) and (7) of the Act and that the Union is a laborорganization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent's employees in the unit set forth in the collective-bargaining agreement described below constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since about March 1984, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees, and since that date has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 1989, to April 30, 1991. At all times since about March 1984, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the unit employees for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

Since about September 6, 1990, the Union, by letter, has requested the Respondent to furnish the Union with various items of information set forth in 117 paragraphs pertaining to 13 categories of documents of the Respondent, All Island Security Systems, Inc., and Unique Electric, Inc. The categories of documents sought by the Union are: certificates of incorporation, corporate officers, corporate directors, shareholders, licenses, addresses/phone numbers/leases, employees, supervision, insurance, equipment, tools, financing/-fund transfers/bonding, and customers.

On about September 27, 1990, the Union initiated a series of grievances against the Respondent which allege, in substance, that the Respondent has breached the collective-bargaining agreement by, among other things, failing to honor the contractual exclusive hiring hall referral procedure; subletting, assigning and/or transferring work within the Union's jurisdiction to other employers; not submitting work report forms on that work; failing to apply contract terms to unit employees; and failing to make funds contributions to the Union on behalf of unit employees.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its function as the collective-bargaining representative of the unit employees, and the processing of the grievances discussed above. The Respondent, however, since about September 6, 1990, has failed to furnish the information to the Union. We find that the Respondent, by this conduct, has failed and refused to bargain collectively in good faith with the representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to furnish the Union-requested information necessary and relevant for collective bargaining, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to furnish the Union with the information requested in its letter dated September 6, 1990.

ORDER

The National Labor Relations Board orders that the Respondent, Frank J. Foronjy & Sons Electric Corp., Massapequa, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the Union by refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, furnish the information requested by the Union in its letter of September 6, 1990.

(b) Post at its facility in Massapequa, New York, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 25, International Brotherhood of Electrical Workers, AFL–CIO, as the exclusive representative of the employees in the bargaining unit by refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union the information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

FRANK J. FORONJY & SONS ELECTRIC CORP.